> not whether the State Department has chosen to seek dismissal of the lawsuit.

Steinberg v. International Comm'n on Holocaust Era Ins. Claims, 133 Cal. App. 4th at 700, 34 Cal. Rptr. 3d at 952.[7]

Likewise, the district judge presiding over the Multi-District Litigation (MDL) proceeding involving the Holocaust-era litigation against Generali had reached the same conclusion as *Steinberg*:

> Plaintiffs argue that the executive agreements at issue in *Garamendi* do not address claims against Generali, and stress that the United States and Italy have not entered into a comparable agreement governing such claims.... However, the *Garamendi* ruling strongly implies that an executive policy need not be formally embodied in an executive agreement in order for the policy to have juridical effect.... *I believe that the Court's emphasis on the Executive's position rather than merely on the text of the agreements means that a court seeking to comprehend the substance of an executive policy should not confine its analysis to the text of executive agreements.*

In re Assicurazioni Generali S.p.a. Holocaust Ins. Litig., 340 F. Supp. 2d 494, 505 (S.D.N.Y. Oct. 14, 2004) (MDL proceeding).

Respondents nonetheless imply that the *Generali* MDL judge reached the opposite conclusion, because they claim that "forty class action and individual actions against European insurance companies not covered by the executive agreements in *Garamendi* are still pending in the Eastern [*sic*] District of New York." Br. in Opp. 13 n.7. The assertion is

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[7] No petition for review was filed with the California Supreme Court in *Steinberg*, and the time for filing such a petition has run. Cal. R. Ct. 28(e).

simply false. In reality, all 15 of the cited cases *have been dismissed* on *precisely* the grounds stated in the MDL judge's Oct. 14, 2004 published opinion. Each of the respective dockets in the Southern District of New York for the cited cases contains an entry, in substantially the following form, stating that:

> In the interest of judicial efficiency and to avoid unnecessary motion practice, the Plaintiffs and Generali stipulate that the above captioned actions shall be disposed of as if they were expressly referenced in the October 14 Opinion. Plaintiffs understand and acknowledge that the effect of this stipulation will be that these actions will be dismissed with prejudice by the Court.

<https://ecf.nysd.uscourts.gov> (7/25/05 docket entry for *Lichtig v. Assicuraziona Generali*, No. 04-CV-5694) (last visited Dec. 17, 2005).

Third, if there were any residual doubt about the scope of the Government's policy, it is dispelled by the Government's own repeated descriptions of it. *See, e.g.*, *Garamendi*, 539 U.S. at 421 (citing congressional testimony that it is the "policy of the U.S. Government" "to resolve matters of Holocaust-era restitution and compensation through dialogue, negotiation, and cooperation"); U.S. Br. in *American Ins. Ass'n v. Garamendi*, No. 02-722, at p.13 ("[W]ith respect to still-unresolved claims against foreign enterprises arising out of the Holocaust, the United States has determined that those claims should be pursued through voluntary, non-adversarial processes rather than through coercive regulation and litigation."); *id.* at p.1 ("the United States has consistently encouraged the use of voluntary, non-adversarial mechanisms for resolving Holocaust victims' claims"); U.S. Br. in *Republic of Austria v. Altmann*, No. 03-13, at p.22 ("[T]he United States' longstanding policy and practice is to prevent courts from becoming entangled in the conduct of foreign relations and to

resolve war-related claims through diplomatic or political, rather than judicial, means.").[8] The Court, of course, can readily confirm what the Government's policy is simply by requesting the views of the Solicitor General.[9]

CONCLUSION

For the reasons stated above and in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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[8] Accordingly, Respondents' claim that the U.S. has "specifically endorsed" such litigation, Br. in Opp. 8, is plainly wrong. Equally unfathomable is Respondents' suggestion that, by failing to include an exception in NAFTA for claims arising from a future hypothetical war with Mexico, the U.S. has somehow signaled its endorsement of litigation to settle wartime claims against foreign sovereigns. Br. in Opp. 23 n.15.

[9] Respondents' argument that the petition should be denied as "interlocutory" is unavailing. Br. in Opp. 29-30. This Court has not hesitated to grant review to address questions of national and international importance where, as here, the Court of Appeals has reversed a district court final judgment. *See, e.g., Central Bank v. First Interstate Bank*, 511 U.S. 164, 168-69 (1994) (review granted to address court of appeals' reversal of district court grant of summary judgment); *Green Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79 (2000) (review granted to address court of appeals' reversal of district court order compelling arbitration and dismissing claims); *see also Republic of Austria v. Altmann*, 541 U.S. at 681 (review granted to address interlocutory denial of motion to dismiss); *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 4 (2003) (reviewing interlocutory appeal of jurisdictional ruling).